

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

JOHN DOE, et al.,

Case No. 02:08 CV 575

Plaintiffs,

JUDGE GREGORY L. FROST

v.

Magistrate Judge NORAH MCCANN KING

**MOUNT VERNON CITY SCHOOL
DISTRICT BOARD OF EDUCATION,
et al.,**

Defendants.

MOTION FOR PERMISSION TO FILE OUT OF TIME TO AMEND/CORRECT

The undersigned counsel for Counterclaimant/Defendant John Freshwater motions this Court for permission to file the attached document to replace the erroneously filed Document 70, titled, *Counterclaimant/Defendant John Freshwater (In His Personal Capacity) Memorandum In Opposition To Plaintiffs' Motion For Partial Summary Judgment*, for the reasons set forth in the attached memorandum.

Respectfully submitted,

s/ R. Kelly Hamilton

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MEMORANDUM IN SUPPORT

In support of this motion, the undersigned counsel for the party admits he erroneously filed a draft copy of the intended motion response instead of the actual intended response which is attached as Exhibit 1. The intended document to be filed contained the actual exhibit citations and exhibits whereas the draft did not. The undersigned counsel realized his mistake on the date of this filing for permission. The substance of both filings are the same but for the exhibit citations. Any opposing counsel or party could not be reasonably harmed or delayed by the excusable neglect committed by the undersigned.

WHEREFORE, the undersigned counsel for Counterclaimant/Defendant John Freshwater respectfully requests this Court permit the intended filing to be filed in place of the erroneous filing.

Respectfully submitted,

s/ R. Kelly Hamilton

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Attorney for Counterclaimant/Defendant John Freshwater

CERTIFICATE OF SERVICE

I hereby certify that on January 6, 2010, a copy of the foregoing was filed electronically. Notice of this filing will be sent to all registered parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

s/ R. Kelly Hamilton

The Law Office of R. Kelly Hamilton (0066403)